

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7645
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL (212) 973-0111
FAX (212) 891-9598

PATRICK J. DONOVAN
DIRECT DIAL: (202) 424-7857
FAX: (202) 424-7643
PJDONOVAN@SWIDLAW.COM

December 10, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

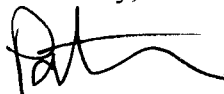
Ex Parte

WC Docket Nos. 96-98, 98-147, 01-338

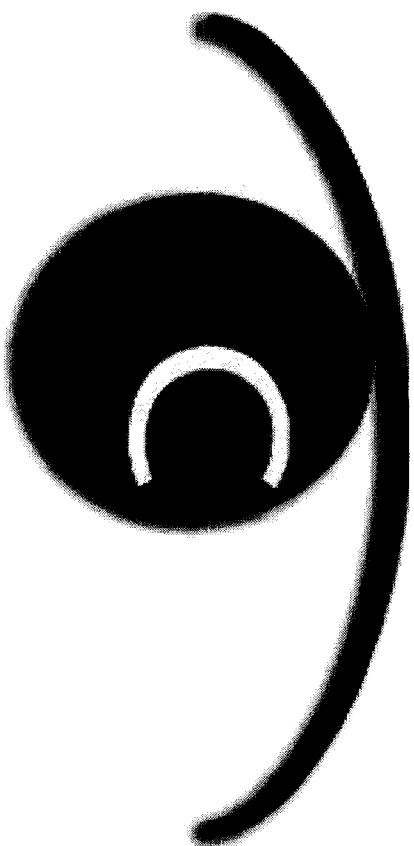
Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on December 9, 2002, Jim Geiger, CEO, and Julia Strow, Vice President - Regulatory Affairs, Cbeyond Communications, and the undersigned met with (1) Commissioner Kevin Martin, Dan Gonzalez; (2) Michelle Carey, Brent Olsen, Tom Navin, Jeremy Miller, Daniel Shiman, Ian Dillner, Anthony Dale, Mike Engel; (3) William Maher, Jeffrey Carlisle, Richard Lerner, and Scott Bergmann. We provided the information and views as set forth in attached document, which was provided at the meeting. This notice is being filed electronically.

Sincerely,



Patrick J. Donovan
Counsel for
Cbeyond Communications



BEYOND COMMUNICATIONS

December 9, 2002

Triennial Review - Key Issues



Loops

- High Capacity DS1 Loops
- No Facilities Issue
 - Must have just and reasonable access to facilities
 - Self provisioning is not feasible

Interoffice Transport Test Components

- Evidence of Facilities Based Wholesale Alternatives
- Route by Route
- Capacity Level
- Cost Based Carrier to Carrier Cross Connects Critical
- Commingling must be permitted prior to granting any interoffice transport relief and operational (e.g., provisioning) flow through in place and demonstrated by the ILEC

New Combinations (e.g. EELs)

- Rules Reinstated
- Promote Facilities Based Competition
- Restrictions on Use Unnecessary
- If Restrictions are Adopted
 - “Bright Line” or Architectural Test More Appropriate and Less Burdensome
 - Presumption is that the circuit qualifies and will be provisioned, ILEC protected by audit capability and retroactive true-up if test not met

Commingling

- Restrictions are unnecessary, anti-competitive and have the impact of creating barriers to entry